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*Attorneys for Plaintiff ThermaPure, Inc.*

The Honorable Robert H. Whaley

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

THERMAPURE, INC., a California  
corporation,

Plaintiff,

v.

JUST RIGHT CLEANING &  
CONSTRUCTION, INC., a Washington  
corporation,

Defendant.

JUST RIGHT CLEANING &  
CONSTRUCTION, INC., a Washington  
corporation,

Counterclaimant,

v.

THERMAPURE, INC., a California  
corporation,

Counterdefendant.

CASE NO. CV-11-00431-RHW

**STIPULATED PROTECTIVE  
ORDER REGARDING  
MANAGEMENT AND USE OF  
INFORMATION PRODUCED IN  
DISCOVERY**

1 Pursuant to Federal Rule of Civil Procedure 26(c) and Federal Rule of  
2 Evidence 502(d), it is hereby ordered that the following Protective Order be  
3 entered in this matter and that the parties shall follow the procedures set forth  
4 below with respect to information, documents, or things produced in this  
5 litigation:

6 1. All documents produced in the course of discovery, including initial  
7 disclosures, all responses to discovery requests, all deposition testimony and  
8 exhibits, electronically stored information, and all other materials which may be  
9 subject to restrictions on disclosure for good cause and information derived  
10 directly therefrom, including but not limited to affidavits and declarations and  
11 exhibits attached thereto (hereinafter collectively “documents”), shall be subject to  
12 this Order concerning confidential information as set forth below. As there is a  
13 presumption in favor of open and public judicial proceedings in the federal courts,  
14 this Order shall be strictly construed in favor of public disclosure and open  
15 proceedings wherever possible. The Order is also subject to the Local Rules of  
16 this District and the Federal Rules of Civil Procedure on matters of procedure and  
17 calculation of time periods.

18 2. A party may designate documents as confidential and restricted in  
19 disclosure under this Order by placing or affixing the words “CONFIDENTIAL”  
20 or “ATTORNEYS’ EYES ONLY” on the document in a manner that will not  
21 interfere with the legibility of the document and that will permit complete removal  
22 of the designation. Documents shall be designated CONFIDENTIAL or  
23 ATTORNEYS EYES ONLY prior to or at the time of the production or disclosure  
24 of the documents. When electronically stored information is produced which  
25

1 cannot itself be marked with the designation CONFIDENTIAL or ATTORNEYS  
2 EYES ONLY, the physical media on which such electronically stored information  
3 is produced shall be marked with the applicable designation. The party receiving  
4 such electronically stored information shall then be responsible for labeling any  
5 copies that it creates thereof, whether electronic or paper, with the applicable  
6 designation. By written stipulation the parties may agree temporarily to designate  
7 original documents that are produced for inspection CONFIDENTIAL or  
8 ATTORNEYS EYES ONLY even though the original document being produced  
9 have not themselves been so labeled. All information learned in the course of such  
10 an inspection shall be protected in accordance with the stipulated designation. The  
11 copies of documents that are selected for copying during such an inspection shall  
12 be marked CONFIDENTIAL or ATTORNEYS EYES ONLY as required under  
13 this Order and thereafter the copies shall be subject to protection under this Order  
14 in accordance with their designation.

15 3. Any party may designate documents as CONFIDENTIAL or  
16 ATTORNEYS EYES ONLY upon making a good faith determination that the  
17 documents contain information protected from disclosure by statute or that should  
18 be protected from disclosure as confidential personal information, medical or  
19 psychiatric information, trade secrets, personnel records, or such other sensitive  
20 commercial information that is not publicly available. Public records and other  
21 information or documents that are publicly available may not be designated as  
22 CONFIDENTIAL or ATTORNEYS EYES ONLY.

23 4. The Parties shall not designate any document as "CONFIDENTIAL"  
24 or "ATTORNEYS' EYES ONLY" without first making a determination that  
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1 protection under Federal Rule of Civil Procedure 26(c) is warranted. Material  
2 designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall be used  
3 by the parties to this litigation solely for the purpose of conducting this litigation,  
4 and not for any other purpose.

5 5. Restrictions and obligations set forth herein relating to designated  
6 documents shall not apply to any information which the parties agree, or the Court  
7 rules, (a) was or becomes public knowledge other than a result of disclosure by  
8 the receiving party, or (b) has come or shall come into the receiving party's  
9 legitimate possession independently of the Providing Party. Such restrictions and  
10 obligations shall not be deemed to prohibit discussions with any person of any  
11 designated documents if the parties agree or the Court rules that said person  
12 already had or obtained possession thereof legitimately.

13 6. Deposition testimony shall be deemed CONFIDENTIAL or  
14 ATTORNEYS EYES ONLY only if designated as such. Such designation shall  
15 be specific as to the portions of the transcript or any exhibit to be designated as  
16 CONFIDENTIAL or ATTORNEYS EYES ONLY. Thereafter, the deposition  
17 transcripts and any those portions so designated shall be protected as  
18 CONFIDENTIAL or ATTORNEYS EYES ONLY, pending objection, under the  
19 terms of this Order. By stipulation read into the record the parties may agree  
20 temporarily to designate an entire deposition and the exhibits used therein for  
21 protection under this Order pending receipt and review of the transcript. In such a  
22 circumstance, the parties shall review the transcript within 30 days of the receipt  
23 thereof and specifically designate the testimony and exhibits that will be protected  
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1 under this Order. Thereafter only the specifically designated testimony and  
2 exhibits shall be protected under the terms of this Order.

3 7. Documents designated CONFIDENTIAL under this Order shall not  
4 be used or for any purpose whatsoever other than the prosecution or defense of  
5 this action, and of any appeal thereof. The parties and counsel for the parties shall  
6 not disclose or permit the disclosure of any documents designated  
7 CONFIDENTIAL to any third person or entity except as set forth in  
8 subparagraphs (i) – (vii). Subject to these requirements, the following categories  
9 of persons may be allowed to review documents that have been designed as  
10 CONFIDENTIAL.

- 11 a. Outside Counsel of Record: Outside counsel of record for the  
12 parties and employees and agents of counsel who have  
13 responsibility for the preparation and trial of the action.
- 14 b. Parties: Parties and employees of a party to this Order.
- 15 c. Trial Court: The Court and its personnel.
- 16 d. Court Reporters and Recorders: Court reporters and recorders  
17 engaged for deposition.
- 18 e. Persons Creating or Receiving Documents: Any person who  
19 authored or recorded the designated document, and any person  
20 who has previously seen or was aware of the designated  
21 document.
- 22 f. Consultants, Investigators and Experts: Consultants,  
23 investigators, or experts employed by the parties or counsel for  
24 the parties to assist in the preparation and trial of this action or  
25

1 proceeding, but only after such persons have completed the  
2 certification contained in Attachment A.

3 g. Others by Consent: Other persons only by written consent of the  
4 producing party or upon order of the Court and on such  
5 conditions as may be agreed or ordered. All such persons shall  
6 execute the certification contained in Attachment A.

7 8. Documents designated ATTORNEYS EYES ONLY under this Order  
8 shall not be used for any purpose whatsoever other than the prosecution or defense  
9 of this action, and of any appeal thereof. The parties and counsel for the parties  
10 shall not disclose or permit the disclosures of any documents designated  
11 ATTORNEYS EYES ONLY to any third person or entity except as set forth in  
12 subparagraphs (i)-(vi). Subject to these requirements, the following categories of  
13 persons may be allowed to review documents that have been designated  
14 ATTORNEYS EYES ONLY.

15 a. Outside Counsel of Record: Outside counsel of record for the  
16 parties and employees and agents of counsel who have  
17 responsibility for the preparation and trial of the action.

18 b. The Court: The Court and its personnel.

19 c. Court Reporters and Recorders: Court reporters and recorders  
20 engaged for deposition.

21 d. Persons Creating or Receiving Documents: Any person who  
22 authored or recorded the designated document, and any person  
23 who has previously seen or was previously aware of the  
24 designated document.

1 e. Consultants Investigators and Experts: Consultants,  
2 investigators, or experts employed by the parties or counsel for  
3 the parties to assist in the preparation and trial of this action or  
4 proceeding, but only after such persons have completed the  
5 certificate contained in Attachment A.

6 f. Others by Consent: Other persons only by written consent of the  
7 producing party or upon order of the Court and on such  
8 conditions as may be agreed or ordered. All such persons shall  
9 execute the certification contained in Attachment A.

10 9. A party shall not be obligated to challenge the propriety of a  
11 CONFIDENTIAL or ATTORNEYS' EYES ONLY designation at the time made  
12 and the failure to do so shall not preclude a subsequent challenge thereto. In the  
13 event that any party to this litigation disagrees with any such designation, such  
14 party shall provide to the producing party a written notice of its disagreement with  
15 the designation. Within ten (10) business days of the written notice the producing  
16 party shall respond to the challenging party identifying in writing the bases for the  
17 asserted designation. The producing party shall bear the burden of showing that  
18 its asserted designation is warranted. The parties shall first try to resolve any  
19 dispute in good faith on an informal basis. If the dispute cannot be resolved, the  
20 party challenging the designation may request appropriate relief from the Court.  
21 Any request for relief from the Court may not be made less than 25 days  
22 following written notice of the challenge of the designation in dispute. Any  
23 disputed documents or other material shall continue to be treated as confidential  
24 under this Protective Order until the Court rules otherwise.

1           10. Any party seeking to file any document(s) designated by the  
2 producing party as CONFIDENTIAL or ATTORNEYS' EYES ONLY must  
3 notify the producing party three days in advance of the proposed filing and  
4 determine if the producing party opposes an application to file the designated  
5 document(s) under seal.

6           11. CONFIDENTIAL or ATTORNEYS' ONLY documents mistakenly  
7 produced or disclosed without an appropriate designation may be subsequently  
8 designated by the producing person pursuant to the terms of this Order. Such  
9 correction and notice thereof shall be made in writing, accompanied by substitute  
10 copies of each item, appropriately marked. Within five days of receipt of the  
11 substitute copies, the receiving party shall return or destroy the previously  
12 unmarked items and all copies thereof.

13           12. The inadvertent production in the course of discovery in this action  
14 of any document or information (whether or not designated as CONFIDENTIAL  
15 or ATTORNEYS' EYES ONLY) shall not be deemed to waive whatever  
16 attorney-client privilege, work product protection or other privileges or immunity  
17 that would otherwise attach to the document or information produced or to other  
18 documents or information, as long as the producing party or person, promptly  
19 after discovery, notifies the other party or parties of the claim of privilege or other  
20 protection or immunity. Upon such notice, the other party or parties shall  
21 promptly destroy all copies of the documents or information referred to, including  
22 any summaries thereof, and notify the producing party that it has done so. Such  
23 destruction and notice shall not constitute an acknowledgment that the claimed  
24 document or information is in fact privileged or entitled to protection or immunity  
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1 and does not preclude the receiving party from seeking to compel production of  
2 the materials for reason other than its inadvertent production.

3 13. This Order shall govern the handling of documents and the  
4 information they contain prior to trial, and shall govern the handling after trial of  
5 documents and information that do not become part of the record at trial. With  
6 respect to documents or information to be used at trial, the parties shall meet and  
7 confer after the pretrial conference to reach an agreement as to the confidentiality  
8 of information to be used at trial. If necessary, the parties will also develop a  
9 method for maintaining the confidentiality of such information and documents at  
10 trial.

11 14. After final termination of this action, counsel for the receiving party  
12 shall return all copies of documents designated as CONFIDENTIAL or  
13 ATTORNEYS' EYES ONLY to counsel for the Providing Party, or shall destroy  
14 such materials, and shall certify either the return or the destruction of all such  
15 materials to counsel for the Providing Party. In addition, counsel for the receiving  
16 party shall either return all copies provided to other persons or shall obtain a  
17 certification of destruction from such persons. Except as specifically provided  
18 herein, the terms, conditions, and limitations of this Protective Order shall survive  
19 the termination of this action.

20 15. Nothing herein shall be deemed to constitute a waiver of any  
21 objection a producing party may have to any request for production of documents  
22 or other requested discovery. Nothing herein shall prevent any party from  
23 objecting to production of documents or objecting to other discovery requests on  
24  
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1 any available grounds, or from seeking alternative protective orders from the  
2 Court.

3 16. This Order is entered based on the representations and agreements of  
4 the Parties and for the purpose of facilitating discovery. Nothing herein shall be  
5 construed or presented as a judicial determination that any documents or  
6 information designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"  
7 by counsel or the Parties is subject to protection under Federal Rule of Civil  
8 Procedure 26(c) or otherwise until such time as the Court may rule on a specific  
9 document or issue. The designation of documents for protection under this Order  
10 does not mean that the document has any status or protection by statute or  
11 otherwise except to the extent and for the purpose of this Order. The designation  
12 "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" does not mean that the  
13 document has any status or protection by statute or otherwise except to the extent  
14 and for the purposes of this Order.

15 17. Any pleadings filed with the Court will not be protected by this Order  
16 unless a motion is filed to enter a Protective Order with respect to a particular  
17 pleading.

18 18. The Court shall have jurisdiction to make any amendments,  
19 modifications or additions to this Protective Order as it deems appropriate.

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23 ///

24 ///

DATED this 28<sup>th</sup> day of June, 2012.

PROTECTIVE ORDER - 11  
(CV-11-000431-RHW)

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1 The Parties, through their undersigned counsel of record, hereby stipulate  
2 and agree to entry of this Stipulated Protective Order.

3 SUMMIT LAW GROUP PLLC

4 By /s/ J. Chad Mitchell

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*EXHIBIT A*

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Counterdefendant.

CASE NO. C11-00431-RHW

**DECLARATION**

1 I, \_\_\_\_\_, declare as follows:

2 1. My address is \_\_\_\_\_.

3 My present occupation is \_\_\_\_\_.

4 2. I have received a copy of the Protective Order in this action. I have  
5 carefully read and understand the provisions of the Protective Order.

6 3. I will comply with all of the provisions of the Protective Order.

7  
8 Executed on \_\_\_\_\_ at  
9 \_\_\_\_\_.

10 I declare under penalty of perjury under the laws of the United States of  
11 America that the foregoing is true and correct.